IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM :

The Hon'ble Mr.JUSTICE Dr.VINEET KOTHARI

AND

The Hon'ble Mr.JUSTICE C.SARAVANAN

W.P.No.28640 of 2017
and WMP Nos.30826 and 30827 of 2017

1. TNU.Tirupathi

2. TNU Yuvarajan

3. S. Indra ... Petitioners

-vs-

1. India Bulls Housing Finance Ltd
rep by its Authorised Officer,
Apex Chambers, I floor,
No.20, Sir Thyagaraya Road,
T. Nagar,
Chennai - 600 017

2. N. Vijaya
3. N. Srinivasan
4. Ananthi
5. Shanthi Sridharan

6. The Registrar,
Debts Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai,
Chennai - 600 008 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records of the impugned order dated 10.10.2017 passed in RA (SA) No.32 of 2015, on the file of 6th respondent and quash the same and consequently restore the order dated 15.05.2015 passed in S.A.No.34 of 2014 on the file of DRT-II, Chennai.

For petitioner	:	Mr.A.K. Raghavulu
For R.1	:	Mr.Adeesh Anto for Mr.S. Sathivel
R.6	:	Tribunal

O R D E R

(Order of the Court was made by Dr.VINEET KOTHARI, J.,)

The petitioners Mr.TNU Tirupathi, S/o Ulaganathan Nadar, TNU Yuvarajan, S/o Ulaganathan Nadar and S. Indra, D/o Ulaganathan Nadar have filed the writ petition before this Court under Article 226 of the Constitution of India aggrieved by the Order dated 10.10.2017 in RA (SA) No.32 of 2015 passed by the Debts Recovery Appellate Tribunal, Chennai.

2. The claim of the petitioners is that they are neither borrowers nor guarantors of the respondent Financial Institution viz., M/s India Bulls Housing Finance Limited, the assignee of M/s India Bulls Housing Finance Limited, from whom, a loan is said to have been obtained in the year 2008 by Mrs.Velammal, W/o Late Ulaganathan, who is the first respondent before the Debts Recovery Appellate Tribunal and who died on 25.06.2014. She had mortgaged the original title deed of the entire property in question viz., undivided half share and interest in the land and building bearing New Door No.18, (Old No.5), Shivaji Street, Thyagaraya Nagar, Madras -17 (including the well and the two out-houses). The petitioners, Ms.N. Vijaya, W/o late TNU Nagarajan and Mr.N. Srinivasan, S/o late TNU Nagarajan and the first respondent before the Tribunal viz., Mrs.Vellammal executed a personal guarantee in favour of the Respondent-Financial Institution.

3. The claim of the petitioners before the Debts Recovery Appellate Tribunal as well as before this Court is that they had 1/10th share of the undivided property belonging to their father late TNU Ulaganathan Nadar and the partition suit has already now been instituted by the present writ petitioner Mr.TNU Tirupathi (1st petitioner) and others in O.S.No.2596 of 2019 and the same is pending on the file of XVI Additional City Civil Court, Chennai.

4. The learned counsel for the petitioner, Mr.A.K.Raghavulu, urged that since the present petitioners, who have definite share in the property in question and they are

neither the mortgagors nor the borrowers, their entire property cannot be put into auction prejudicing their right in the property.

5. On the other hand, the learned counsel appearing for the first respondent Financial Institution viz.,M/s India Bulls Housing Finance Ltd., Mr.Adeesh Anto, submits that this is the fourth round of litigation by some members of the family or the others and they have been obstructing the recovery proceedings right from the year 2008 and in the earlier three SARFAESI Appeals before the Debts Recovery Tribunal-II, Chennai in S.A.Nos.27/2011, 46/2011 and 98/2011, no ground was raised about the share of the members in the property and the respondent Institution has been only obstructed by such unnecessary litigations to recover the outstanding loan amount against the Borrowers despite holding a valid mortgage of the entire land in question.

6. The Debts Recovery Tribunal has assigned the following reasons while allowing the appeal filed by the Financial Institution on 10.10.2017 by affirming the Demand Notice and Possession Notice issued by the Financial Institution. The relevant portions of the order dated 10.10.2017 are quoted hereunder for ready reference:-

> “”5. According to Appellant financial institution, impugned order is bad in law, because original title deeds of the entire property was deposited by R1 along with legal heirs and are still in possession of the Appellant. R1 had executed a Deed of Guarantee and gave her immovable property as security. In earlier SARFAESI Appeals, theory of 1/10th share of deceased mother was never raised and pleaded between the same parties, those are the close blood relatives and family members also. Now this is not open to raise a new objection in the name of deceased mother. In earlier SARFAESI Appeals, i..e, S.A.No.27/2011, S.A.No.46/2011 and RA(SA) No.98/2011, share of the members was never made a ground in Appeal, hence, in fourth round of SARFAESI Appeals, this new ground cannot be raised. In fact, Respondents are estopped from raising this ground of 1/10th share of R1 deceased mother in the property. This is nothing but

delaying tactics.

6. On the other hand, supporting the impugned order, Ld.Counsel for Respondents No.2, 7 and 8 (hereinafter referred as R2, R7 and R8) submitted that the property was jointly owned by Late T.N.U. Nagaraajan and his wife Mrs.N. Vijaya. WhenT.N.U. Nagarajan, the half undivided share holder in Suit property died on 18.5.2001, leaving behind his mother, now R1 deceased Velammal and R3 to R6 became joint owners in capacity of her legal representatives. R5 and R6 never executed the letter of guarantee for giving loan to R3 and R4. R.1, R5 and R6 have never created equitable mortgage in the property in respect of their share. At the behest of deceased R1's Writ Petition, Appellant financial institution was forced to issue a fresh notice under Section 13(2) of the SARFAESI Act. Hence, Appellant cannot ignore the fact of 1/10th share of the deceased R1 in the property.

7. On careful perusal of the pleadings of the parties, submissions of the Counsel of the parties and record, it becomes clear that R1 along with R5 and R6 have created a valid equitable mortgage by depositing the title deeds and loan was availed by R3 and R4. R1 had also executed a letter of guarantee dated 22.3.2008. R1, R3, R4, R5 and R6 all are close family members and blood relatives. In the backdrop of such relationship, a careful perusal is necessary, because as a design and device, defaulters should not be permitted to delay and defer the recoveries on hyper-technical grounds. All family members actively participated in the execution of deeds in favour of the Appellant financial institution while they obtained loan and supported each other. While Appellant enforced recovery proceedings, then the Respondents started creating hurdles in

the name of joint family shares and hyper-technical objections. A valid mortgage has been created by deposit of title deeds by all the Respondents. Accordingly, Appellant financial institution had issued notices under SARFAESI Act after observing all necessary formalities. For the sake of technicalities, if it is presumed that R1 deceased mother had a $1/10^{th}$ share in the property, at the most, it can be ensured that $1/10^{th}$ amount of sale proceed should be kept reserved or earmarked in the name of deceased R1.

8. Insofar as objection of $1/10^{th}$ share of R1 deceased mother is concerned, it is not permissible at this stage in the background of three SARFAESI Appeals already filed by the family members and disposed of accordingly. To safeguard the interest of the deceased mother, $1/10^{th}$ share of sale proceed can be kept reserved in the name of deceased R1. PO of DRT has erred in setting aside the notices of the Appellant financial institution in the name of $1/10^{th}$ share of R1.

9. In view of the facts and circumstances of this case, Demand

Notice and Possession Notice are hereby affirmed. Impugned Order is set aside. Appeal stands allowed as indicated above."

7. Having heard the learned counsel for the parties and on perusing the reasons assigned by the Debts Recovery Appellate Tribunal, we are satisfied that unless and until the share of the present petitioners is decreed by the competent Civil Court, where the civil suit O.S.No.2596 of 2019, filed for partition is pending on the file of XVI Additional City Civil Court, Chennai, the petitioners, claiming to be the co-sharers of the property, cannot claim any right against the respondent Financial Institution to obstruct the recovery procedure under Special Law of SARFAESI Act, 2002.

8. Even assuming that a decree of partition is passed in favour of the petitioners, the only recourse open to them is to

pursue remedy for such share as per the Decree against the persons holding the property at that point of time. Merely because the claim for partition is made by the petitioners and they may be the family members belonging to such share in the property, which is yet to be decreed by the competent civil court, we are of the clear opinion that the petitioners cannot obstruct or injunct the recovery procedure under SARFAESI Act. We find that the Tribunal has unnecessarily observed in the impugned order that even if it is presumed that the deceased mother had 1/10th share in the property, it can be ensured that 1/10th amount of sale proceeds should be kept reserved or earmarked in her name.

9. The said observation has no legal foundation unless and until the competent Civil Court determines the respective shares in respect of the said property. Such observation does not entitle the present petitioners or other members of the family, who may not be mortgagors or guarantors any such right to the extent of 1/10th share or otherwise of the property in question. Therefore, to the extent the learned Tribunal has allowed the appeal, filed by the Financial Institution against the order passed by the Debts Recovery Tribunal-II, is justified but as far as the recovery of 1/10th share of sale proceeds which was ordered to be kept reserved in the name of the deceased mother, is not only unsustainable but pre-mature at this stage.

10. Admittedly, the Civil Suit for partition of the property in question is still pending. The validity of the mortgage or submitting of original title documents of the entire property to the financial institution is not in question at all and what is claimed by the petitioners is only their share in the said undivided property which is yet to be decreed by the competent Civil Court. Therefore, at this stage, the petitioners cannot be permitted to interfere with the recovery procedure to be undertaken by the financial institution under SARFAESI Act,2002.

11. Therefore, the writ petition is found to be devoid of merit and the same is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

sr

To

The Registrar,
Debts Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai,
Chennai - 600 008

+1cc to Mr.S. Sathivel, Advocate SR.No.96864

+1cc to Mr.A.K. Raghavulu, Advocate SR.No.96413

W.P.No.28640 of 2017

KK(CO)
GMY(11/12/2019)